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Michael Calvo was born in Tunisia. An expert in international law, he was a member of the International Court of Arbitration representing Israel.

Applying sovereignty in Judea and Samaria is legal

The Jews are the indigenous people in Judea and Samaria. Security Council resolutions stating otherwise are not binding.

By Michael Calvo — Published on 05-18-2020 18:47 — Last modified: 05-18-2020 19:15

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The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP or DOTROIP), adopted by the United Nations General Assembly on September 13, 2007, by a majority of 144 states in favor, 4 votes against, and 11 abstentions (A/RES/61/295), recognized that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (Art. 26.1) and that the exercise of these rights, shall be free from discrimination of any kind (Art. 2).

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With domestic state practice, the legal status and rights of indigenous people has evolved and crystallized into international customary law. For example, the Inter-American Commission on Human Rights declared that "there is an international customary law norm which affirms the rights of indigenous peoples to their traditional lands". The African Court on Human and Peoples' Rights, affirmed that land rights of indigenous people are protected and that these rights are "general principles of law".

France, England, Belgium, Luxembourg, Germany, and others voted in favor of the Declaration. Since 2007, Australia, Canada, New Zealand and the United States who voted against, formally endorsed the Declaration in 2010. In their relations with Israel (which also voted in favor of the declaration), these states cannot claim that the declaration does not apply to Israeli Jews, since such position would amount to blatant racial discrimination.

According to international law, the Jews are the indigenous people, also known as first peoples, aboriginal peoples or native peoples of the land referred to as Judea Samaria, Palestine or Holy Land, and therefore fulfill the criteria required by international law.

The Jews are the ethnic group who was the original settler of Judea and Samaria 3,500 years ago, when the land was bestowed upon the Jews by the Almighty. Leaders of this world, who chose to make abstraction of history, misleadingly refer to Judea and Samaria as the "West Bank" of the Jordan River (which includes Israel) or the "Occupied Palestinian Territories".

After the Balfour declaration (1917), the Treaty of Lausanne (1923), the British Mandate (1922), the San Remo Resolution (1920), and the Treaty of Sevres (1920) created International law, recognized and re-established the historical indigenous rights of the Jews to their land. The signatories of these treaties and the mandate (Britain, France, Turkey, Japan, Italy, etc…), are bound by them.

In the Mandate for Palestine accorded to Great Britain in August 1922, the League of Nations recognized "*the historical connection of the Jewish people with Palestine and the grounds for reconstituting their national home in that country*". The Jewish people's right to settle in the land of Palestine, their historic homeland and to establish their state there, is thus a legal right anchored in international law.

The UNDRIP reaffirms the right of the Jewish people as the indigenous people, and "especially their rights to their lands, territories and resources." The time has come for the Jews to fully exercise their rights.

The UN General Assembly resolutions stating that the settlement of Jews in Judea Samaria is contrary to international law, are no more than recommendations and have never led to amendments of existing binding treaties.

UN Security Council resolutions stating that the settlements in Judea and Samaria are illegal are not binding. Only resolutions taken under Chapter VII of the UN Charter, are binding on all UN member states.

For example, Security Council Resolution 2334 was adopted on December 23, 2016 by a 14-0 vote. Four permanent members of the Security Council – China, France, Russia and the United Kingdom – voted in favor, the US abstained. This resolution was not adopted under Chapter VII of the Charter. It is not binding. That resolution states that Israel's settlement activity constitutes a "flagrant violation" of international law. It has "no legal validity". This resolution violates the UNDRIP, the British Mandate and the other treaties.

The right of the Jewish people to "settle" in the West Bank, and Israel's right to annex some parts of Judea and Samaria (part of Palestine) derive from the mandate (Levy Report of July 9, 2012). Pursuant to the mandate, the right to annex some parts of Judea and Samaria is a direct consequence of the right of the Jews to settle in all Palestine i.e. the territory of the 1936 Mandate.

Article 80 of the United Nations Charter (1945) recognized the validity of existing rights that states and peoples acquired under the various mandates, including the British Mandate on Palestine (1922), and the rights of Jews to settle in Palestine (Judea-Samaria) by virtue of these instruments. (Pr. E. Rostow). These rights cannot be altered by the UN.

"Except as may be agreed upon in individual trusteeship agreements ... nothing in this Charter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or

any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties." (Article 80, paragraph 1, UN Charter)

In a series of decisions and advisory opinions on Namibia, the International Court of Justice ruled that a League Mandate is a binding international instrument like a treaty, which continues as a fiduciary obligation of the international community until its terms are fulfilled. In the case of Namibia, the court upheld the Security Council's ruling that South Africa had abandoned its rights as Mandatory Power by breaching some of its fundamental duties. The mandate survived as a trust, based on legal principles confirmed by Article 80 of the Charter.

Like the South African Mandate, the Palestine Mandate survived the termination of the British administration as a trust under Article 80 of the UN Charter (Pr. E Rostow).

Jewish rights of "settlement" in the so-called "West Bank" (Palestine) therefore exist; it cannot seriously be contended, as the EU, the Western States, France, Britain, Russia, China and other states do, that Israeli settlements in the West Bank are illegal and that annexation is contrary to international law. This position is political, not legal. Despite UN resolutions to the contrary, the establishment of Israeli civilian settlements in the West Bank is not inconsistent with international law, US Secretary of State Mike Pompeo said.

Israel, the Jewish State, as a member of the international community has the right but also the duty to fulfill the mandate that most nations disregarded fearing terrorism and the Muslim world, animated by 2000 years of religious hatred and anti-Semitism.

One Hundred and three years passed since the Balfour Declaration, 73 years since the 29 November 1947 UNGA Resolution 181 was rejected, 52 years since the 1967 Six Days war, and 27 years since the Oslo Accords. The Oslo Accords of 1993 and 1995, were signed but did not lead to peace. The Muslims Arab leaders of Judea Samaria and Gaza do not want peace, they refused Israel's offer made in 2000 and in 2008 to live in peace.

The participation of the Palestinian Authority security apparatus in the killing of Jews since 1993 is a proof, as well as the pay-to-slay to prisoners implicated in terror-related offenses. Abbas' threats that the Palestinians will provoke an "uprising" after the Bahrein Conference and after Israel applies sovereignty, should be taken seriously. Abbas is definitively not interested in peace.

Israel has the duty to draw the logical consequences of this behavior and annex all or some of the territories in area C, to secure the existence of its population within secure borders,

and to be able to receive those of the 6 million Jews still living in exile, who wish to settle in Israel.

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Clayton Miller
19 May, 2020

Excellent article. As the author correctly points out, the land in question belongs to Israel under international law. Specifically, Article 6 of the League of Nations Mandate for Palestine (preserved under Article 80 of the U.N. Charter) calls for "close Jewish settlement" on the land West of the Jordan river.

Even the original version of the Palestinian National Charter — formulated in 1964, a full three years before the "West Bank" fell under Israeli administration — unequivocally forswears Palestinian claims to "any territorial sovereignty over the West Bank in the Hashemite Kingdom of Jordan and Gaza."

It is difficult to imagine a more authoritative source for exposing as bogus the Palestinian claim that the "West Bank" and Gaza comprise their "ancient homeland."

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OrangeChefHat
19 May, 2020

Professor Kevin Heller nails it in his assessment of this 'expert' and his article of rubbish legal arguments 19 May 2020 "…..Kevin Jon Heller@kevinjonheller

You have to work really, really hard to get international this wrong. #Israel #Palestine …"

Reply 1

Clayton Miller > OrangeChefHat
19 May, 2020

The very definition of irony: criticizing the author's legal analysis while offering none in return.

Reply 1

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